

City of Portland

Bureau of Development Services

Land Use Services Division

1900 SW Fourth Ave. Suite 5000 Portland, Oregon 97201 Telephone: 503-823-7300 TDD: 503-823-6868

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Date: August 21, 2008 **To:** Interested Person

From: Ronda Fast, Land Use Services

(503) 823-7839 / FastR@ci.portland.or.us

NOTICE OF A TYPE II DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-125436 AD

GENERAL INFORMATION

Applicant: Bill Villwock, Jeffrey Miller Architects

834 SW St Clair, #202 Portland, OR 97205

Owners: Stephen & Meredith Davis

211 SW Kingston Ave Portland, OR 97205

Site Address: 157 SW KINGSTON AVE

Legal Description: BLOCK 23 LOT 10 & LOT 9 ARLINGTON HTS & RPLT;

Tax Account No.: R037506850 and R037506840

State ID No.: 1N1E32DD 03300 and 1N1E32DD 03301

Ouarter Section: 3026

Neighborhood: Arlington Heights, Jeff Boly at 503-223 4781.

District Coalition: Neighbors West/Northwest, Mark Sieber at 503-823-4212.

Zoning: R7, Single-Dwelling Residential 7,000

Case Type: AD, Adjustment Review

Procedure: Type II, an administrative decision with appeal to the Adjustment

Committee

Proposal: The applicants intend to renovate, add on-to an exiting house, and make site improvements on the lot. The overall scope of work includes a house renovation and addition, the demolition of an existing detached garage located behind the house, a new detached garage with Accessory Dwelling Unit (ADU) above, an altered driveway, and other various site enhancements.

The building wall of the proposed detached garage/ ADU will be located 1' 11" from the west (rear) property line at its closest point. The eave will extend 1 foot from the rear property line at its closest point. Detached accessory structures require a minimum building setback of 5 feet from side and rear property lines. The applicant is requesting an adjustment to Section 33.110.220 and Table 120-3, to allow the west (rear) wall of the proposed detached accessory structure to be located 1' 11" from the west (rear) property line with the eave 1' from the property line.

The outdoor fireplace which was originally proposed in the side (south) setback is no longer proposed in the setback. After discussions with the neighbor to the south, the applicants revised the proposal and relocated the fireplace outside of the setback towards the rear of the lot. Therefore, the adjustment to allow a vertical accessory structure larger than 3 feet in width, depth, or diameter in a side or rear setback is no longer requested.

In addition, to meet the ADU design requirements, the roof pitch on the ADU must be the same as the predominant roof pitch of the house. The predominant roof pitch of the house is $6\frac{1}{2}$: 12. The pitch of the proposed ADU is 9:12. Therefore, an Adjustment is also being requested to Code Section 33.205.030.C.8 to allow the roof pitch of the proposed ADU to differ from the primary residence.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the Adjustment Review approval criteria of Chapter 33.805.040.A-F of the Portland Zoning Code.

ANALYSIS

Site and Vicinity: The site is located in a residential area south of W. Burnside Street and north of Washington Park. The area is quite steep, but the terrain on this site slopes gently uphill from north to south. The slope on the site is less than 20 percent. This site is developed with a single-dwelling home and a detached garage towards the rear of the lot. The site is 10,000 square feet and is comprised of two 5,000 square foot platted lots. The previous owners completed a Lot Confirmation to confirm buildability for both the lots individually, since the house is located on one of the two platted lots, but the current owners intend to use both platted lots as one site.

Zoning: The zoning on the site, and in the surrounding vicinity is R7. R7 is a single-dwelling residential zone with a maximum density of one dwelling unit per 7,000 square feet of site area. Lot sizes in the R7 zone may range in size between 4,200 and 12,000 square feet.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **June 17, 2008**. The following Bureaus have responded with no issues or concerns:

- Bureau of Transportation Engineering
- Water Bureau
- Fire Bureau
- Bureau of Parks-Forestry Division

The Bureau of Environmental Services (BES) responded with comments that connections to the storm-only line would be acceptable if on-site infiltration rates are not adequate (Exhibit E-1).

In coordination with BES, the Site Development Section of BDS responded with comments stating that they have no objection to defer the submittal of a stormwater report that addresses the stormwater hierarchy until building permit review. Requirements of the 2008 Stormwater Management Manual must be met at that time (Exhibit E-2).

The Life Safety/Plan review section responded with comments that the two taxlots must be rejoined back together with the county, or the property owners may file a covenant with the Count Assessors office that both properties may not be sold separately (and concurrent Building Code appeal), or complete a Property Line Adjustment. This will be resolved in order to meet building code requirements during permit review (Exhibit E-3).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 17, 2008. One written response was received in response to the proposal.

The neighbor to the south of the subject site responded with concerns about the appearance of the proposed fireplace and the impacts of the fireplace on fire and life safety.

Staff note: The applicants have changed the location of the fireplace so that it is located outside of the setback at the rear/west end of the lot. It is no longer part of this proposal and therefore not part of this review.

ZONING CODE APPROVAL CRITERIA

33.805.010 Purpose (Adjustments)

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Adjustment Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Findings: Adjustment 1). to allow the west (rear) wall of the proposed detached accessory structure to be located 1'11" from the property line with the eave at 1' from the west (rear) property line.

The $\mathbf{setback}$ regulations for buildings and garage entrances serve several purposes:

- They maintain light, air, separation for fire protection, and access for fire fighting;
- They reflect the general building scale and placement of houses in the city's neighborhoods;
- They promote a reasonable physical relationship between residences;
- They promote options for privacy for neighboring properties;
- They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;
- They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the

topography of the site, allow for required outdoor areas, and allow for architectural diversity; and

• They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.

The garage/ADU structure is proposed at the rear of the lot, approximately 76 feet from the front property line. The existing garage, currently located near the rear property line, has a footprint of approximately 400 square feet. The new structure will have approximately 600 square foot footprint.

Directly behind the proposed structure, the slope increases dramatically. The home to the rear of the site is located at a significantly higher elevation than the garage/ADU structure. Existing, well established landscaping exists between the residences, mostly on the site to the west. With these screening elements, there is no anticipated impact on light and air as a result of the rear setback adjustment.

A reasonable distance is maintained between residences and access for fire fighting is maintained – nearly 60 feet will separate the new garage/ADU structure and the residence to the rear. Fire separation requirements will be required by the Building Code at time of permit review for portions of structures located closer than 3 feet to a property line. Additionally, the Fire Bureau responded with no concerns with the proposal.

Detached accessory structures are common within the vicinity of the site. Detached accessory structures can be found in the front, side and rear setbacks in the area. It is not expected that privacy will be impacted since no windows are proposed along the wall proposed to be in the setback. The view from the residence to the rear (west) will be predominately rooftop due to the slope.

The applicants intend to utilize part of the footprint of the existing detached garage and have designed the building to be in keeping with the scale and design of both the home and the neighborhood. An existing arborvitae hedge on the site to the rear also serves as a buffer and provides screening between the properties. Therefore, this criterion is met.

Adjustment 2). to allow to allow the roof pitch of the proposed ADU to differ from the primary residence.

Design standards for **accessory dwelling units** (ADU's) are intended to:

- Ensure that accessory dwelling units are compatible with the desired character and livability of Portland's residential zones;
- Respect the general building scale and placement of structures to allow sharing of common space on the lot, such as driveways and yards;
- Ensure that accessory dwelling units are smaller in size than houses, attached houses, or manufactured homes; and
- Provide adequate flexibility to site buildings so that they fit the topography of sites.

The roof pitch of the existing home is $6\frac{1}{2}$:12 and the proposed ADU will have a 9:12 pitch. The roof area of the ADU is broken up by two dormers that face the street. The difference in pitch is not so significant that it will be noticeable, nor will the difference in roof pitch detract from the desired character and livability in the area. The minor variation in roof pitch from the primary dwelling to the ADU does not stray from the intent of the ADU design standards. Therefore, this criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The proposal to reduce the rear setback and to allow a different roof pitch on the garage/ADU structure than the house will not detract from the livability or appearance of the residential area. The garage/ADU structure will be located nearly 76 feet from the front property line and more than 50 feet from the residence potentially most impacted (to the west/rear). The project integrates elements such as window orientation, siding and materials that results in a unified and intentional design that matches the character of the existing house and surrounding neighborhood. Therefore, this criterion is met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: The project is consistent with the overall purpose of the zone which is to provide opportunities for single-dwelling residential development. Accessory dwelling units (ADU's) are allowed in all residential zones that are developed with a house and are consistent with the residential character of the area. The request to allow a slightly different roof pitch on the garage/ADU structure has no impact on the residential character. The reduced setback on the rear property line will not detract from the livability or appearance of the residential area. Therefore, this criterion is met.

D. City-designated scenic resources and historic resources are preserved; and

Findings: There are no scenic or historic resources on the site. Therefore, this criterion does not apply.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: The distance between the proposed garage/ADU and the residence closest to the rear lot line is nearly 60 feet and the slope and existing vegetation between the buildings is well established. Therefore, it is not anticipated that any impacts will result from the Adjustment for either the reduced setback or the request to have a different roof pitch than the house. Therefore, this criterion does not apply.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: There is no environmental zoning on the site. Therefore, this criterion does not apply.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

All of the approval criteria have been met for the requested Adjustments. The reduced setback will have no noticeable impacts on adjacent properties. The request to slightly modify the roof pitch of the Accessory Dwelling Unit (ADU) is still consistent with the ADU design standards and has no impact on the residential character of the area. Therefore, the adjustments can be approved.

ADMINISTRATIVE DECISION

Approval of 1). An Adjustment to Section 33.110.220 and Table 120-3, to allow the west (rear) wall of the proposed detached accessory structure to be located 1'11" from the property line with the eave at 1' from the west (rear) property line and 2). An Adjustment to Code Section 33.205.030.C.8 to allow the roof pitch of the proposed ADU to differ from the primary residence, per the approved site plans, Exhibits C-1 through C-3, signed and dated August 21, 2008, subject to the following conditions:

A. As part of the building permit application submittal, each of the 4 required site plans and any additional drawings must reflect the information and design approved by this land use review as indicated in Exhibits C.1-C.3. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File # LU 08-125436 AD."

Decision rendered by: ______ on August 21, 2008.

By authority of the Director of the Bureau of Development Services

Decision mailed: August 21, 2008

Staff Planner: Ronda Fast

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on April 29, 2008, and was determined to be complete on June 17, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on April 29, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant extended the 120-day review period for 30 days.

Some of the information contained in this report was provided by the applicant.

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

Conditions of Approval. If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed by 4:30 PM on September 4, 2008 at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. An appeal fee of \$250 will be charged. The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within

21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- Unless appealed, The final decision may be recorded on or after **September 5, 2008 (the business day following the last day to appeal).**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034 For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

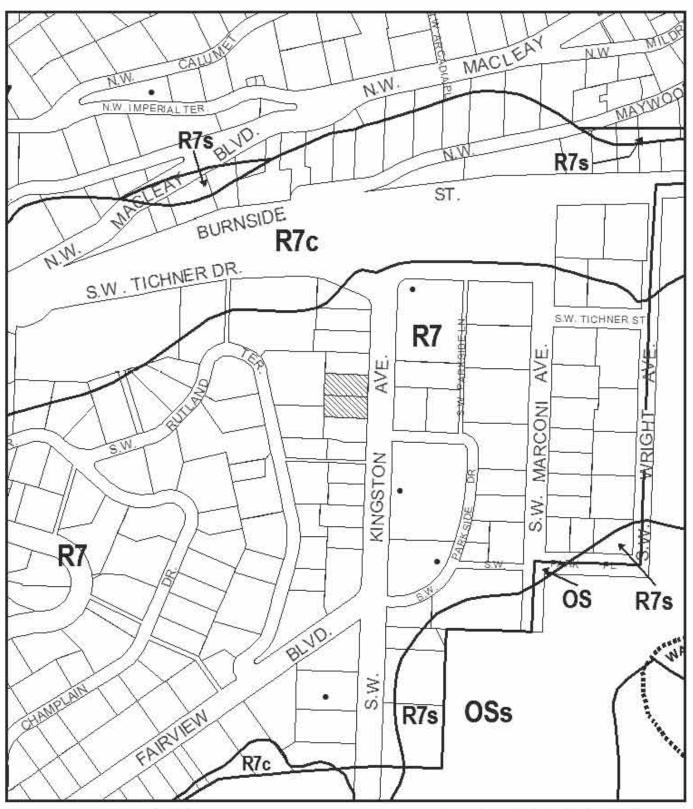
Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. East and North Building Elevations (attached)
 - 3. West and South Building Elevations (attached)
 - 4. Main Floor Plan
 - 5. Upper Floor Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Site Development Review Section of BDS
 - 3. Life Safety/Plan Review Section of BDS
 - 4. Bureau of Transportation Engineering and Development Review
 - 5. Water Bureau
 - 6. Fire Bureau
 - 7. Bureau of Parks, Forestry Division
- F. Correspondence:
 - 1. Kevin and Becky Overbeck, 7/3/08, concerns about the proposed fireplace
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research

The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).



ZONING Site

Historic Landmark



File No.	LU 08-125436 AD	
1/4 Section	3026	
Scale		= 200 feet
	1N1E32DD 3301	
Exhibit _	В	(May 02,2008)

